



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00780/2019
Chandigarh, this the 30.1.2020
(Order reserved on: 27.01.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. NAINI JAYASEELAN, MEMBER (A)

Surjit Kumar aged 63 yrs S/o Sh. Batna Ram resident of Ward No. 8, VPO Saloh, Tehsil Haroli, District Una (H.P) (retired on 31.10.2006 as Office Superintendent from the O/o SDE (HRD), GMTD, BSNL Ropar (Punjab)- Pin 174303, Group 'B'

Applicant

(BY: MR. RAVI BADIYAL, ADVOCATE)

Versus

1. Union of India through its Secretary to Government of India, Ministry of Communications & I.T., Deptt. Of Telecommunications, Ashoka Road, Sanchar Bhawan, Delhi, Pion-110001.
2. The Chairman and managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi-110001.
3. The Chief General Manager, Plot No.2, Himalaya Marg, Sub. City Center, Sector 34A, Sector 34, Chandigarh-160022.
4. The Controller of Communication Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-160019.
5. The General Manager, Telecom District, BSNL, Plot No. 117, Giani Zail Singh Nagar, Roopnagar, Distt. Roopnagar-140001.
6. The Controller of Communications Accounts, HP Telecom Circle, Block 18-A, SDA Complex, Kasumpti, Shimla (H.P-171009).

**(BY: MR. VINOD K. ARYA, ADVOCATE FOR
RESPONDENTS NO.1,4&6)**
**MR. RAKESH VERMA, ADVOCATE, FOR
RESPONDENTS NO.2,3&5.**

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Respondents



ORDER
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The applicant has approached this Tribunal with a prayer to quash order dated 18.12.2016 (Annexure A-3), vide which his pay fixation has been revised w.e.f. 1.10.2004 and for quashing order dated 21.3.2017 (Annexure A-6) ordering recovery for Rs.2,41,947/- and PPO dated 28.3.2017 (Annexure A-5) fixing pension at Rs.27,990/- instead of at Rs.29,400/- etc.
2. Notwithstanding the challenge posed in the O.A., to pay fixation orders, learned counsel for the applicant made a statement at Bar that applicant restricts his claim qua recovery only and as such his claim for re-fixation of pay/pension stands dismissed as withdrawn.
3. The facts are largely not in dispute. The applicant joined service as Telegraphist, in the pay scale of Rs.260-480/- in Postal & Telegraph Department on 10.3.1983 and was later on transferred to and absorbed in BSNL. He was promoted as Senior Telecom Office Assistant w.e.f. 20.1.2002 in pay scale of Rs.7100-200-10100. Pursuant to Memorandum dated 23.3.2010 and 20.8.2010, he was granted first financial up gradation w.e.f. 1.10.2004 and his pay



was fixed at Rs.8925 in pay scale of Rs.7800-225-11175 from 1.3.2005, instead of basic pay of Rs.8300 in pay scale of Rs.7100-200-10100 w.e.f. 1.10.2004. He retired on 31.10.2016, with basic pay of Rs.29,400 in the pay scale of Rs.16,370-30,660. However, pursuant to letters dated 6.12.2016 and 13.1.2017, the pay of applicant was re-fixed at Rs.8500/- w.e.f. 1.3.2005 instead of Rs.8925/- earlier fixed, with consequential reduction and resultantly, as on 31.10.2016, his pay was reduced to Rs.27,990 from Rs.29,400/- resulting into a recovery of Rs.2,41,947/- from his retiral dues. The applicant claims that recovery is not permissible in view of decision in C.A. No. 11527/2015 titled **STATE OF PUNJAB & OTHERS VS. RAFIQ MASIH & OTHERS,** decided on 18.12.2014. Hence, the O.A.

4. The respondents No.1,4&6 have filed a reply. They submit that on examination of pension papers of applicant, it was found that applicant was promoted as Sr. TOA w.e.f. 20.1.2002 and he had been granted NEPP w.e.f. 1.10.2004 and on examination it was found that he was not eligible for promotion under NEPP on 1.10.2004 as he became eligible for that on 20.1.2009



and as such his pay fixation was revised and recovery was ordered which is permissible. Respondents No.2,3&5 have filed a separate reply. They submit that the applicant had given an undertaking on 7.5.2018 that he would refund the excess money paid to him, in case his pay fixation is decided to the contrary by the DoT. Thus, they submit that the applicant challenge the recovery made from him.

5. We have heard the learned counsel for the parties and examined the material on file.

6. In so far as pay fixation is concerned, the same stands dismissed as withdrawn. The only issue now remains to be decided is as to whether, the respondents could make recovery of over payment from the applicant or not, more so when he has given in writing that if pay fixation done is found to be not in order, then recovery can be made from him.

7. The plea raised by learned counsel for the applicant that the respondents have not followed the principles of natural justice and as such impugned orders qua recovery cannot be sustained is not tenable on the touchstone of prejudice theory. There are



enumerable cases where Courts discard principles of natural justice after satisfying that the outcome of the case could not make any difference even if natural justice is fully observed. It is based on 'Useless formality' theory, as on the admitted facts only one conclusion is possible, so the Court would not insist on the observance of the principles of natural justice because it would be futile to order its observance. The Hon'ble Supreme Court had applied this theory in **DHARMARATHMAKARA RAI BAHADUR ARCOT RAMASWAMY MUDALIAR EDUCATIONAL INSTITUTION VS. EDUCATION APPELLATE TRIBUNAL**, (1999) 7 SCC 332. It has been held that in cases where grant of opportunity in terms of the principles of natural justice does not improve the situation, "useless formality" theory is pressed into service. In this case, the applicant admits pay fixation and as such opportunity to show cause was not necessary where facts are undisputed and the affected person could not fourth any valid defence.

8. The learned counsel for the applicant placed reliance upon decision in the case of **STATE OF PUNJAB ETC. VS. RAFIQ MASIH ETC.** (2015) 4 SCC



334, to argue that if recovery is going to cause hardship to certain category of employees of Group C and D, it should not be made.

9. After the aforesaid decision, the Hon'ble Apex Court in the case of **HIGH COURT OF PUNJAB & HARYANA & OTHERS VS. JAGDEV SINGH** reported in (2016) 14 SCC 267 has held that recovery is permissible. In this case, the court held that "The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.". It was also argued that even at earlier point of time granting the applicant financial up-gradation, an undertaking was taken from him. The respondents have pleaded and annexed undertaking dated 7.5.2018 in which that applicant had given in writing to make recovery if any mistake is found later on in fixation of pay and that being so, we



do not find any fault in action of respondents, more so when he has retired as a Group B officer.

10. In the wake of the above discussion, we find that present OA is devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.

(NAINI JAYASEELAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh
Dated: 30.01.2020

HC*